UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVE CARLTON AND SHARON KEGERREIS, Individually and on behalf of all others similarly situated, Plaintiffs, v. FRED CANNON, JOHN K. KARNES, and VINOD KHOSLA, Defendants.	§ § § § § § § § § § § §	Civil Action No. 15-cv-00012

DECLARATION OF ALEXANDRA C. BOUDREAU
IN SUPPORT OF DEFENDANT FRED CANNON'S
MOTION TO DISMISS THE THIRD AMENDED CLASS ACTION COMPLAINT

Alexandra C. Boudreau deposes and says:

1. I am an attorney at the law firm Wilmer Cutler Pickering Hale and Dorr, LLP, attorneys for Defendant Fred Cannon in the above-captioned action. I respectfully submit this declaration in support of Defendant Fred Cannon's Motion to Dismiss The Third Amended Class Action Complaint, for the purpose of making part of the record the documents referred to therein.

2. Attached hereto as **Exhibit A** is a "red-line" document illustrating the differing cautionary language contained in KiOR's Annual Report for FY 2012 (Form 10-K) (Mar. 18, 2013)[1] relative to KiOR's Annual Report for FY 2011 (Form 10-K) (Mar. 27, 2012).[2] The black and green text appear in both documents (with the latter indicating a shift in relative

[1] Declaration of Alexandra C. Boudreau ("Boudreau") (Dkt. 94-1), filed in support of Defendant Cannon's Motion to Dismiss (Dkt. 94), Ex. 17, at 257, 274-87.
[2] Boudreau Ex. 8, at 79, 94-106.

position within the documents). Blue text appears in the FY 2012 report and not in the FY 2011 report. Red text appeared in the FY 2011 report and not in the FY 2012 report.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 22nd day of May 2015 in Boston, Massachusetts.

Alexandra C. Boudreau

EXHIBIT A

Cautionary Language in FY 2012 Form 10-K Relative to that of FY 2011 Form 10-K

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

This Annual Report on Form 10-K~~ (“~~, or Annual Report~~”)~~, contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, as amended, that involve substantial risks and uncertainties. All statements other than statements of historical fact contained in this Annual Report, including statements regarding our future results of operations and financial position, business strategy and plans and our objectives for future operations, are forward-looking statements. The words “believe,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “expect” and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs.

In particular, forward-looking statements in this Annual Report include statements about:

- ~~the size of the potential markets for our cellulosic gasoline and diesel~~our ability to obtain additional debt and/or equity financing on acceptable terms, if at all;
- ~~the expected production costs and cost competitiveness of our cellulosic gasoline and diesel;~~
- the sufficiency of our cash to meet our liquidity needs;
- the timing of and costs related to steady-state operations at our initial scale commercial production facility in Columbus, Mississippi;
- our ability to ~~obtain additional debt or equity financing on acceptable terms, if at all~~continuously operate our facilities without delay or shutdowns;
- the timing of and costs related to commencement of production and generation of revenues at our initial scale commercial production facility;
- the ~~anticipated performance attributes of our cellulosic gasoline and diesel~~timing of and costs related to the construction and commencement of operations at our planned standard commercial production facility;
- the accuracy of our estimates regarding expenses, construction costs, future revenue and capital requirements;
- the ~~timing of the construction and commencement of operations at our initial scale and planned standard commercial production facilities~~expected production costs of our cellulosic gasoline, diesel and fuel oil, including our ability to produce cellulosic gasoline and diesel without government subsidies and on a cost-effective basis;
- the anticipated performance attributes of our cellulosic gasoline, diesel and fuel oil;
- our projected yield for our fuels produced by our catalyst platform;
- achievement of advances in our technology platform and process design, including improvements to our yield;
- our ability to produce cellulosic gasoline and diesel at commercial scale;
- our ability to obtain feedstock at commercially acceptable terms;
- our ability to locate production facilities near low-cost, abundant and sustainable feedstock;
- the future price and volatility of petroleum-based products and competing renewable fuels and of our current and future feedstocks;
- ~~government regulatory certification, including certification of our gasoline and diesel products as cellulosic biofuels and registration of our products with the U.S. Environmental Protection Agency as fuels, and industry acceptance of our cellulosic gasoline and diesel, as well as certification, registration and acceptance of our products for use in jet fuel;~~
- government policymaking and incentives relating to renewable fuels;

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- our ability to obtain and retain potential customers for our cellulosic gasoline~~ and~~, diesel and fuel oil; and
- our ability to hire and retain skilled employees~~;~~.
- ~~our ability to obtain and maintain intellectual property protection for our products and processes; and~~
- ~~the ability of our competitors, many of whom have greater resources than we do, to offer alternatives to our cellulosic gasoline and diesel.~~

These forward-looking statements are subject to a number of important risks, uncertainties and assumptions~~, including those described in "Risk Factors" in Part I, Item 1A and elsewhere in this Annual Report. Moreover, we operate in a competitive and rapidly changing environment in which new risks emerge from time to time. It is not possible for our management to predict all risks~~. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this Annual Report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. The following important factors, among others, could cause actual results to differ materially and adversely from those contained in forward-looking statements made in this Annual Report: our ability to raise additional capital in order to fund our current operations and expand our business; the availability of cash to invest in the ongoing needs of our business; our ability to successfully commercialize our cellulosic gasoline, diesel and fuel oil; our ability to effectively scale our proprietary technology platform and process design; the cost of constructing, operating and maintaining facilities necessary to produce our cellulosic gasoline, diesel and fuel oil in commercial volumes; the ability of our initial-scale commercial production facility, in which we are in the start-up phase, to satisfy the technical, commercial and production requirements under offtake agreements relating to the sale of cellulosic gasoline, diesel and fuel oil; market acceptance of our cellulosic gasoline, diesel and fuel oil; the ability of our initial-scale commercial production facility to produce fuel on time and at expected yields; and our ability to obtain and maintain intellectual property protection for our products and processes, as well as other risks and uncertainties described in "Risk Factors" in Item 1A of Part I and elsewhere in this Annual Report. Moreover, we operate in a competitive and rapidly changing environment in which new risks emerge from time to time. It is not possible for our management to predict all risks.

We cannot guarantee that the events and circumstances reflected in the forward-looking statements will occur or be achieved. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this Annual Report, except to the extent required by law.

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ITEM 1A. *Risk Factors*

Investing in our securities involves a high degree of risk. You should carefully consider the following risks and all other information contained in this Annual Report, including our consolidated financial statements and the related notes, before investing in our securities. If any of the following risks materialize, our business, prospects, financial condition and operating results could be materially harmed.

Risks Related to Our Business and Industry

We are a development stage company and have not generated any significant revenue, and our business will not succeed if we are unable to commercialize successfully our cellulosic gasoline and diesel.

We are a development stage company with a limited operating history, and we have not yet commercialized successfully our cellulosic gasoline and diesel nor have we generated any significant revenue. We are subject to the substantial risk of failure facing businesses seeking to develop new products. Certain factors that could, alone or in combination, prevent us from successfully commercializing our products include:

- technical challenges developing our commercial production processes that we are unable to overcome;

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- our ability to finance the roll-out of our planned standard commercial production facilities, including securing private or public debt and/or equity financing, project financing and/or federal, state and local government incentives;
- our ability to achieve commercial-scale production of cellulosic gasoline and diesel on a cost-effective basis and in the time frame we anticipate;
- our ability to secure and maintain customers to purchase any cellulosic gasoline and diesel we produce from our initial-scale and planned commercial production facilities;
- our ability to produce cellulosic gasoline and diesel that meet our potential customers' specifications;
- our ability to secure access to sufficient feedstock quantities at economic prices;
- changes in governmental regulations and policies affecting the renewable fuels industry;
- our ability to secure and maintain all necessary regulatory approvals for the production, distribution and sale of our cellulosic gasoline and diesel and to comply with applicable laws and regulations; and
- actions of direct and indirect competitors that may seek to enter the renewable transportation fuels markets in competition with us or that may seek to impose barriers to one or more aspects of the cellulosic gasoline and diesel business that we are pursuing.

We have a history of net losses, and we expect significant increases in our costs and expenses to result in continuing losses as we seek to commercialize our cellulosic gasoline and diesel.

We have incurred substantial net losses since our inception, including net losses of $~~64.1~~96.4 million, $~~45.9~~64.1 million and $~~14.1~~45.9 million for the years ended December 31, 2012, 2011~~,~~ and 2010~~ and 2009~~, respectively. We expect that sales revenue in 2013 from the commencement of production from our Columbus facility will be limited and, we expect these losses to continue until at least 2015. We do not expect to have positive cash flows at least until our Natchez facility has been constructed and is operational. As of December 31, ~~2011~~2012, we had an accumulated deficit of $~~130.4~~226.8 million. We expect to incur additional costs and expenses related to the continued development and expansion of our business, including our research and development expenses, continued testing and development at our pilot and demonstration units and engineering and design work and construction of our planned commercial production facilities. As noted under "—We need substantial additional capital in order to meet our ongoing operating and other costs, expand our business, and meet our debt service obligations' and in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," we also expect our cash requirements to meet our debt service obligations and other costs related to our borrowings will increase in 2013 compared to the year ended December 31, 2012. We have not yet commercialized successfully our cellulosic gasoline and diesel ~~nor have~~and we have generated ~~any~~only limited revenue from our Columbus facility to date. We cannot assure you that we will ever achieve or sustain profitability on a quarterly or annual basis.

~~***We have no experience producing cellulosic gasoline and diesel at the scale needed for the development of our business or in building the facilities necessary for such production, and we will not succeed if we cannot effectively scale our proprietary technology platform and process design.***~~

~~We must demonstrate our ability to apply our proprietary technology platform and process design at commercial scale to convert biomass into cellulosic gasoline and diesel on an economically viable basis. Such production will require that our proprietary technology platform and process design be scalable from our demonstration unit to commercial production facilities. We have not yet completed construction of or operated a commercial-scale production facility, and our technology may not perform as expected when applied at the scale that we plan or we may encounter operational challenges for which we are unable to devise a workable solution. In particular, our initial-scale commercial production facility under construction in Columbus, Mississippi is a first-of-kind project, and we cannot assure you that it will be completed on the schedule that we intend or at all. If and when completed, our initial-scale commercial production facility may not process biomass at designed levels or produce our cellulosic gasoline and diesel at acceptable yields, and we may be unable to improve its performance. As a result of these risks, we may be unable to achieve commercial-scale production in a timely~~

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~~manner, or at all. If these risks materialize, our business and ability to commercialize our cellulosic gasoline and diesel would be materially and adversely affected.~~

~~The actual cost of constructing, operating and maintaining the facilities necessary to produce our cellulosic gasoline and diesel in commercial volumes may be significantly higher than we plan or anticipate.~~

~~The production of commercial volumes of our cellulosic gasoline and diesel will require the construction of commercial-scale facilities. The construction of these new facilities will require the expenditure of significant amounts of capital, which may exceed our estimates. We may be unable to complete these facilities at the planned costs, on schedule or at all. The construction of new facilities may be subject to construction cost overruns due to labor costs, labor shortages or delays, costs of equipment and materials, weather delays, inflation or other factors, which could be material. In addition, the construction of our facilities may be subject to the receipt of approvals and permits from various regulatory agencies. Those agencies may not approve the projects in a timely manner or may impose restrictions or conditions on a production facility that could potentially prevent construction from proceeding, lengthen its expected completion schedule and/or increase its anticipated cost.~~

~~If and when our facilities are constructed, our operating and maintenance costs may be significantly higher than we anticipate. In addition, our facilities may not operate as efficiently as we expect and may experience unplanned downtime, which may be significant. As a result, our initial-scale commercial production facility under construction in Columbus, Mississippi or one or more of the planned standard commercial production facilities may be unable to achieve our expected investment return, which could adversely affect our business and results of operations.~~

We ~~will~~ need substantial additional capital in ~~the future in~~ order to meet our ongoing operating and other costs, expand our business, and meet our debt service obligations.

We require substantial additional capital to meet our ongoing overhead and other operating costs, grow our business, particularly as we continue to design, engineer and construct our commercial production facilities, meet our debt service obligations and pay other costs, including payments due at maturity of our borrowings. The extent of our need for additional capital will depend on many factors, including ~~our ability to obtain equity and debt financing from various public or private sources and~~ the amounts necessary to complete startup of the Columbus, Mississippi production facility, the funds necessary to cover the front-end capital expenditures for our planned first standard commercial production facility in Natchez, Mississippi, and the funds necessary to meet any related equity contribution requirements~~,~~ or debt service obligations; whether we succeed in producing cellulosic gasoline and diesel at commercial scale~~,~~; our ability to control costs, the progress and scope of our research and development projects~~,~~; the effect of any acquisitions of other businesses or technologies that we may make in the future; and the filing, prosecution and enforcement of patent claims.

As of December 31, 2012, we had aggregate indebtedness of $172.2 million. In March 2011, our wholly-owned subsidiary KiOR Columbus LLC, or KiOR Columbus, entered into a loan with the Mississippi Development Authority, or the MDA, which loan we refer to as our MDA loan. Under the MDA loan, the MDA agreed to make disbursements to KiOR Columbus from time to time, in a principal amount not to exceed $75 million in the aggregate, to reimburse costs incurred by KiOR Columbus to purchase land, construct buildings and to purchase and install equipment for use in the manufacturing of the Company's cellulosic gasoline and diesel from Mississippi-grown biomass. In December 2012, we began making semi-annual payments of $1.9 million under our MDA loan which we must continue to make until maturity.

In order to proceed with our first standard commercial production facility in Natchez, Mississippi, we will need to obtain additional financing in 2013. Future financings that involve the issuance of equity securities would cause our existing stockholders to suffer dilution. In addition, debt financing sources may be unavailable to us on acceptable terms or at all, may be expensive and any debt financing may subject us to restrictive covenants that limit our ability to conduct our business or otherwise be on unfavorable terms. Also, all or substantially all of our assets are pledged as security for borrowings under the Loan and Security Agreement we have with 1538731 Alberta Ltd. as agent and lender, 1538716 Alberta Ltd. as lender, who we refer to collectively as the Alberta Lenders, and KFT Trust, Vinod Khosla, Trustee, as lender, who we refer to as Khosla. Under the Loan and Security Agreement, we received term loans in the aggregate principal amount of $75 million. In March 2013, we entered into an amendment to our Loan and Security Agreement which, among other things, (i) increases the amount available under the facility by $50 million, which we may borrow from Khosla, based on our capital needs, before March 31, 2014, subject to the terms of the Loan and Security Agreement, (ii) replaces the

requirement to make installment payments of principal and interest with a single balloon payment at maturity, (iii) allows us to elect payment of paid-in-kind interest throughout the term of the loan, (iv) modifies certain financial and negative covenants, including a covenant that required us to complete an equity offering meeting certain conditions on or before March 31, 2013, (v) requires us to raise additional capital in the amount of $175 million on or before March 31, 2014 unless we demonstrate three months cash on hand, (vi) increases by $25 million the limit on the amount of capital expenditures we can make on our first standard commercial production facility prior to raising additional funds and (vii) provides for the conversion, subject to the satisfaction of certain conditions, of (A) the secured obligations and certain other amounts in connection therewith owed to certain of the lenders into the debt issued in connection with our financing of our Natchez facility and (B) the secured obligations and certain other amounts in connection therewith owed to certain of the lenders into equity securities issued in connection with our financing of our Natchez facility.

We believe that our ~~$131.6 million of~~existing cash and cash equivalents~~ as of December 31, 2011 and the proceeds~~, our expected revenues from our ~~January 2012 $75~~initial-scale commercial production facility and the additional $50 million ~~term loan~~available under our Loan and Security Agreement will enable us to meet our material liquidity needs ~~for at least~~through the next ~~12~~twelve months~~ from December 31, 2011. Future financings that involve the issuance of equity securities would cause our existing stockholders to suffer dilution. In addition, debt financing sources may be unavailable to us and any debt financing may subject us to restrictive covenants that limit our ability to conduct our business~~. However, we will need to obtain outside funding in order to fund our operations beyond that period of time. The pledge of all or substantially all of our assets for borrowings under the Loan and Security Agreement may make it difficult to raise additional debt financing. We may be unable to raise sufficient additional funds on acceptable terms, or at all. If we are unable to raise sufficient funds, our ability to fund our operations, continue our current business plan, comply with debt covenants, take advantage of strategic opportunities, develop products or technologies, or otherwise respond to competitive pressures could be significantly limited. If this happens, we may be forced to delay the construction of commercial production facilities, delay, scale back or terminate research or development programs or the commercialization of products resulting from our technologies, curtail or cease operations or obtain funds through collaborative and licensing arrangements that may require us to relinquish commercial rights or grant licenses on terms that are unfavorable to us. If adequate funds are unavailable, we will be unable to execute successfully our business plan or to continue our business. In addition, we have significant indebtedness that is secured by all of our assets. In the event of a default on our debt, our lenders could foreclose on our assets. If that were to occur, our operations would be severely jeopardized, if not entirely curtailed.

We are vulnerable to disruptions to our renewable fuel production operations, because all our production operations exist in a single first-of-kind facility.

Because all of our production operations currently exist in a single facility in Columbus, Mississippi, significant and prolonged disruptions at the facility would have a material adverse effect on our business, financial condition and results of operations. Our initial-scale commercial production facility in Columbus, Mississippi is our only existing production facility. We are in the start-up phase at this first-of-kind facility, and only commenced limited sales of our cellulose diesel in March 2013. During the Columbus facility's early years of production and until the facility stabilizes operationally, the facility may be more susceptible to start-ups and shutdowns that will disrupt and delay our production activities for significant time periods. We do not know when or if we will achieve stable operations at Columbus. Even if we achieve steady-state operations at the facility, we will be required to perform periodic maintenance and turnarounds at the facility. All or a significant portion of the facility may be disrupted during maintenance or a turnaround. These disruptions will make any future revenue and cash flows unpredictable.

Our operations also may be disrupted by external events such as an interruption of electricity, natural gas, water treatment or other utilities. Other potentially disruptive events include natural disasters, severe weather conditions, workplace or environmental accidents, mechanical failure, fires, explosions, interruptions of supply, work stoppage, losses of permits or authorizations or acts of terrorism. Some of these events can cause personal injury and loss of life, severe damage to or destruction of property and equipment and environmental damage, and may result in suspension or cessation of operations and the imposition of civil or criminal penalties. Further, we conduct our Columbus, Mississippi operations in a first-of-kind facility and our employees have limited experience operating the facility. We can provide no assurance that we will not incur losses related to these or other events beyond the limits or outside the coverage of our insurance policies. Further, disruptions to our

operations could have a material adverse effect on our business and results of operations during the period of time that the facility is not operating.

We have no experience producing cellulosic gasoline and diesel at the scale needed for the development of our business or in building the facilities necessary for such production, and we will not succeed if we cannot effectively scale our proprietary technology platform and process design.

We must demonstrate our ability to apply our proprietary technology platform and process design at commercial scale to convert biomass into cellulosic gasoline and diesel on an economically viable basis. Such production will require that our proprietary technology platform and process design be scalable from our demonstration unit to commercial production facilities. We only commenced limited sales of our cellulosic diesel during March 2013 at our Columbus facility and have not yet reached steady-state operations at this initial-scale commercial production facility. Also, we have not constructed a standard commercial production facility, which we are planning to be three times larger than our Columbus facility. Our technology may not perform as expected when applied at the scale that we plan or we may encounter operational challenges for which we are unable to devise a workable solution. In particular, our initial-scale commercial production facility in Columbus, Mississippi, is a first-of-kind project, and we cannot assure you that it will process biomass at designed levels or produce our cellulosic gasoline and diesel at acceptable yields, and we may be unable to improve its performance. As a result of these risks, we may be unable to achieve commercial-scale production in a timely manner, or at all. If these risks materialize, our business and ability to commercialize our cellulosic gasoline and diesel would be materially and adversely affected.

We have significant indebtedness which is secured by all of our assets, which may limit cash flow available to invest in the ongoing needs of our business and may negatively impact our ability to expand our business.

As of ~~March 16~~December 31, 2012, we had ~~$76.2~~aggregate indebtedness of $172.2 million, of which approximately $163.1 million was principal amount of debt outstanding ~~under our January 2012 loan because we paid in kind the interest. This loan is secured by all of the assets of the company, including our intellectual property assets. The terms of our January 2012 $75 million term loan require that we raise at least $100 million from sales of our equity securities before we make capital expenditures exceeding $25 million on our planned first standard commercial production facility in Mississippi. In addition, we agreed to consummate the sale, in one or more transactions, of our equity securities with gross cash proceeds equal to at least $50 million on or before March 31, 2013, provided that we are not required to consummate such transactions so long as we maintain cash or liquid funds equal to at least 6 month of our projected operating cash requirements in accounts subject to the Lenders' security interest. In addition, we have borrowed $75.0 million from the Mississippi Development Authority. We will need to raise additional capital to service our debt.~~, approximately $5.6 million is unamortized final payment requirements, and approximately $3.5 million is prepayment penalties. This principal amount of debt outstanding consisted of:

- $88.0 million principal amount of debt outstanding under our Loan and Security Agreement with Khosla and the Alberta Lenders;
- $73.1 million under our loan with the MDA;
- $ 1.9 million under our equipment loan agreement with Lighthouse Capital Partners VI, L.P.; and
- $ 137,000 under our equipment loan agreement with Silicon Valley Bank, which was repaid in full in March 2013.

Our Loan and Security Agreement is secured by all of our assets, including our intellectual property assets. Our MDA loan is secured by certain equipment, land and buildings of KiOR Columbus and is guaranteed by us in full. Our loan with Lighthouse Capital Partners VI, L.P. is collateralized by certain of our production pilot unit, lab equipment and office equipment valued at approximately $5.0 million.

In addition, the terms of our debt facilities impose certain obligations and limitations on our future activities, which include requirements under our MDA loan to make a $500.0 million investment in property, plant and equipment located in Mississippi and expenditures for wages and direct local purchases in Mississippi totaling $85.0 million.

The terms of our MDA loan and Loan and Security Agreement permit us to defer principal and/or interest payments for a period of time. On December 31, 2012, as required under the terms of our MDA loan, we began making principal payments on our MDA loan semi-annually on December 31 and June 30 of each year until maturity.

In March 2013, we entered into an amendment to our Loan and Security Agreement which, among other things, (i) increases the amount available under the facility by $50 million, which we may borrow from Khosla, based on our capital needs, before March 31, 2014, subject to the terms of the Loan and Security Agreement, (ii) replaces the requirement to make installment payments of principal and interest with a single balloon payment at maturity, (iii) allows us to elect payment of paid-in-kind interest throughout the term of the loan, (iv) modifies certain financial and negative covenants, including a covenant that required us to complete an equity offering meeting certain conditions on or before March 31, 2013, (v) requires us to raise additional capital in the amount of $175 million on or before March 31, 2014 unless we demonstrate three months cash on hand, (vi) increases by $25 million the limit on the amount of capital expenditures we can make on our first standard commercial production facility prior to raising additional funds and (vii) provides for the conversion, subject to the satisfaction of certain conditions, of (A) the secured obligations and certain other amounts in connection therewith owed to certain of the lenders into the debt issued in connection with our financing of our Natchez facility and (B) the secured obligations and certain other amounts in connection therewith owed to certain of the lenders into equity securities issued in connection with our financing of our Natchez facility.

Our business plan also contemplates that we will need to raise additional funds to build our planned standard commercial production facilities and subsequent facilities, continue the development of our technology and products ~~and~~, commercialize any products resulting from our research and development efforts~~.~~ and satisfy our debt service obligations.

Our leverage could have significant adverse consequences, including:

- requiring us to dedicate a substantial portion of any cash flow from operations to the payment of interest on, and principal of, our debt, which will reduce the amounts available to fund working capital, capital expenditures, product development efforts and other general corporate purposes;
- increasing our vulnerability to general adverse economic and industry conditions;
- requiring us to seek to raise additional debt to service, refinance or repay our existing debt;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we compete; and
- placing us at a competitive disadvantage compared to our competitors that have less debt.

We may not have sufficient funds or may be unable to arrange for additional financing to pay the amounts due under our existing debt. In addition, a failure to comply with the covenants under our existing debt instruments could result in an event of default ~~under those instruments~~. Furthermore, there are cross-default provisions in certain of our existing debt instruments such that an event of default under one agreement or instrument could result in an event of default under another. If an event of default resulted in the acceleration of all of our payment obligations under our debt instruments as of February 28, 2013, we would be required to pay our lenders an aggregate of $173.6 million. In the event of an acceleration of amounts due under our debt instruments as a result of an event of default, we may not have sufficient funds or may be unable to arrange for additional financing to repay our indebtedness or to make any accelerated payments, and the lenders could seek to enforce their security interests in the collateral securing such indebtedness. Because of the covenants under our existing debt instruments and the pledge of our existing assets as collateral, we have a limited ability to obtain additional debt financing.

The actual cost of constructing, operating and maintaining the facilities necessary to produce our cellulosic gasoline and diesel in commercial volumes may be significantly higher than we plan or anticipate.

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The production of commercial volumes of our cellulosic gasoline and diesel will require the construction of commercial-scale facilities. The construction of these new facilities will require the expenditure of significant amounts of capital, which may exceed our estimates. We may be unable to complete these facilities at the planned costs, on schedule or at all. The construction of new facilities may be subject to construction cost overruns due to labor costs, labor shortages or delays, costs of equipment and materials, weather delays, inflation or other factors, which could be material. In addition, the construction of our facilities may be subject to the receipt of approvals and permits from various regulatory agencies. Those agencies may not approve the projects in a timely manner or may impose restrictions or conditions on a production facility that could potentially prevent construction from proceeding, lengthen its expected completion schedule and/or increase its anticipated cost.

If and when our facilities are constructed, our operating and maintenance costs may be significantly higher than we anticipate. In addition, our facilities may not operate as efficiently as we expect and may experience unplanned downtime, which may be significant. As a result, our initial-scale commercial production facility in Columbus, Mississippi or one or more of the planned standard commercial production facilities may be unable to achieve our expected investment return, which could adversely affect our business and results of operations.

~~We may be unable to obtain regulatory approval for the registration of our products as transportation fuels or as cellulosic biofuel under applicable regulatory requirements. The denial or delay of any of such approvals could delay our commercialization efforts and adversely impact our potential customer relationships, business and results of operations.~~

~~We seek to commence commercial sales of cellulosic gasoline and diesel from our initial-scale commercial production facility in the second half of 2012. Our cellulosic gasoline and diesel will be subject to government regulation in our target markets. The EPA administers the CAA, which regulates the commercial registration, distribution and use of fuel products or fuel additives. Before an entity can introduce a fuel or fuel additive into commerce, it must register that fuel or fuel additive with the EPA. Our gasoline and diesel have not been registered with the EPA as a fuel.~~

~~In addition, in order for our gasoline or diesel to qualify as a renewable fuel, advanced biofuel or cellulosic biofuel for the purpose of satisfying the mandates of the RFS2, upon petition the EPA will conduct its own assessment of the greenhouse gas emissions associated with the production and use of our gasoline or diesel and must verify that our feedstocks qualify as renewable cellulosic biomass. The EPA may not complete this assessment in a timely manner, which could delay or increase the costs of the commercialization of our products, or it may determine that our gasoline or diesel do not reduce greenhouse gas emissions in a sufficient amount to qualify as a renewable fuel, advanced biofuel or cellulosic biofuel under RFS2. The EPA could also decide that our feedstocks do not meet the definition of renewable biomass, and thus our products would be ineligible for RFS2 credits. A decision by the EPA that our products do not qualify as a renewable fuel, advanced biofuel or cellulosic biofuel for purposes of satisfying renewable fuel mandates would significantly reduce demand for our product, which would materially and adversely affect our business.~~

Our offtake agreements for the sale and purchase of the cellulosic gasoline, diesel and fuel oil from our initial-scale commercial production facility ~~under construction~~ are subject to the satisfaction of certain technical, commercial and production requirements that we have not yet met. If we fail to meet these requirements, our commercialization plan could be delayed or harmed.

Currently, our Catchlight offtake ~~agreements~~agreement and FedEx master ground fuel supply agreement for the sale and purchase of the cellulosic gasoline, diesel and fuel oil to be produced at our initial-scale commercial production facility ~~under construction~~in Columbus, Mississippi are subject to the satisfaction of certain technical, commercial and production requirements that we have not yet met in full. These agreements do not affirmatively obligate our counterparties to purchase specific quantities of any products from us at this time, and these agreements contain important conditions that must be satisfied before any such purchases are made. These conditions include that we and our counterparties agree on product specifications for our cellulosic gasoline, diesel and fuel oil and that our products conform to those specifications. If we do not satisfy these contractual requirements and if we subsequently are unable to renegotiate those terms, our counterparties may terminate the agreements and our commercialization plan could be delayed or harmed if we need to find other counterparties.

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We face challenges in obtaining market acceptance of our cellulosic gasoline and diesel, and our business would be harmed if they are not accepted by prospective customers in the transportation fuels market.

We intend to market our cellulosic gasoline and diesel to refiners, terminal and rack owners and end users. These potential customers frequently impose lengthy and complex product qualification procedures on new products, influenced by finished product specifications, processing considerations, regulatory issues and other factors. Potential customers may be reluctant to adopt new products due to a lack of familiarity with our cellulosic gasoline and diesel even though our products meet industry specifications. In addition, our cellulosic gasoline and diesel may need to satisfy product certification requirements of equipment manufacturers. For example, fleet owners may need to certify that the use of our cellulosic gasoline and diesel in their vehicles will not invalidate product warranties. If we are unable to convince prospective customers that our cellulosic gasoline and diesel are compatible with their existing processes or that the use of our products is otherwise to their benefit, our business will be adversely affected.

We have limited experience in structuring arrangements with prospective customers for the purchase of our cellulosic gasoline and diesel, including price mechanisms that allow us to realize the benefit of any government incentives our cellulosic gasoline and diesel generate for ourselves or our potential customers, and we may not succeed in this essential aspect of our business.

We have not yet ~~completed the commercial development of~~consistently produced our cellulosic gasoline and diesel on a commercial scale, and we have limited experience structuring arrangements with potential customers that would allow us to benefit from new government incentives for renewable fuels. Our pricing formula with these potential customers must be designed to allow us to realize the benefits of cellulosic biofuel ~~RIN credits~~RINs, cellulosic biofuel tax credits and other government incentives we generate for ourselves or our customers. Markets that value cellulosic biofuel ~~RIN credits~~RINs and other government incentives may take a long period of time to develop or may not materialize at all. These events could delay our ability to capitalize on the opportunities presented to us by our technology, including preventing us from achieving commercialization of our cellulosic gasoline and diesel.

Further, we plan to sell large amounts of our products to specific potential customers, and this will require that we effectively negotiate contracts for these relationships. The companies with which we expect to have customer arrangements generally are much larger and have substantially greater bargaining power than us. As a result, we may be ineffective in negotiating the terms of our relationships with these companies, which could adversely affect our future results of operations.

The price of ~~RIN credits~~RINs may reduce demand for our products.

RFS2 allows additional ~~RIN credits~~RINs to be granted to obligated parties who blend into their fuel more than the required percentage of renewable fuels in a given year. These ~~credits~~RINs may be traded to other parties or may be used in subsequent years to satisfy RFS2 requirements. The trading prices of renewable fuel and advanced biofuel ~~RIN credits~~RINs are influenced by, among other factors, the transportation costs associated with renewable fuels, the mandated level of renewable fuel use for a specific year, the possibility of waivers of renewable fuel mandates and the expected supply of renewable fuel products. Any reduction in the cost of RIN credits could reduce the demand for our cellulosic gasoline and diesel.

Our future success may depend on our ability to produce our cellulosic gasoline and diesel without government incentives on a cost-competitive basis with petroleum-based fuels and renewable fuels derived from other sources, such as cane sugar or ethanol. If current or anticipated government incentives are reduced significantly or eliminated and petroleum-based fuel prices or competitive renewable fuel prices are lower or comparable to the cost of our cellulosic gasoline and diesel, demand for our products may decline, which could adversely affect our future results of operations.

Changes in government regulations, including mandates, tax credits, subsidies and other incentives, could have a material adverse effect upon our business and results of operations.

Cautionary Language in FY 2012 Form 10-K Relative to that of FY 2011 Form 10-K

The market for renewable fuels is heavily influenced by foreign, federal, state and local government regulations and policies. Changes to existing, or adoption of new foreign, federal, state and local legislative and regulatory initiatives that impact the production, distribution or sale of renewable fuels may harm our business. For example, RFS2 ~~currently calls~~called for 15.2 billion gallons of liquid transportation fuels sold in 2012 to come from renewable fuels, a mandate that grows to 36 billion gallons by 2022. Of this amount, 8.65 million gallons of renewable fuel used in 2012 was required to be cellulosic biofuel and 16 billion gallons of renewable fuels used annually by 2022 must be cellulosic biofuel. ~~In the United States and in a number of other countries, regulations and policies like RFS2 have been modified or discontinued in the past and may be modified or discontinued again in the future. In the United States, the EPA Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, may waive certain renewable fuels standards, on his or her own motion or in response to a petition requesting such waiver, to avert economic harm or in response to inadequate supply.~~The EPA's 2012 cellulosic biofuel mandate of 8.65 million gallons was vacated by a January 25, 2013 decision by the U.S. Court of Appeals for the D.C. Circuit, which found that the EPA's methodology improperly incorporated the goal of "promoting growth." The EPA has proposed a 2013 cellulosic biofuel standard of 14 million gallons which it states complies with the D.C. Circuit's ruling on the 2012 cellulosic biofuel mandate. The 2013 standard may be amended following comment, and following issuance of a final rule, third-parties may mount challenges similar to those made to the 2012 mandate.

The EPA Administrator is also required to reduce the mandate for cellulosic biofuel use if projected supply for a given year falls below a minimum threshold for that year. Any reduction in, or waiver of, mandated requirements for fuel alternatives and additives to gasoline may cause demand for renewable biofuels to decline and deter investment in the research and development of renewable fuels. The EPA Administrator could also revise qualification standards for renewable fuels in ways that increase our expenses by requiring different feedstocks, impose more extensive tracking and sourcing requirements, or prevent our process from qualifying as a renewable fuel under RFS2.

In addition, the U.S. Congress has passed legislation that extends tax credits for, among other things, the production of certain renewable fuel products as contemplated by our current process design. However, we cannot assure you that this or any other favorable legislation will remain in place. Any reduction in or phasing out or elimination of existing tax credits, subsidies and other incentives in the United States and foreign markets for renewable fuels, or any inability of us or our prospective customers to access such credits, subsidies and other incentives, may adversely affect demand for, and increase the overall cost of our cellulosic gasoline and diesel, which would adversely affect our business. In addition, market uncertainty regarding future policies may also affect our ability to develop new renewable products and to sell products to our potential customers. Any inability to address these requirements and any regulatory or policy changes could have a material adverse effect on our business, financial condition and results of operations.

We may be unable to realize expected economies of scale, reduce our feedstock costs, increase our overall yields and optimize the composition of our cellulosic ~~gasoline and diesel~~intermediate oil, which could limit our ability to sell our products at competitive prices and materially and adversely affect our business and prospects.

We may be unable to realize expected economies of scale, reduce our feedstock costs, increase our overall yields and optimize the composition of our ~~renewable crude~~cellulosic intermediate oil in order to produce our cellulosic gasoline and diesel on a cost-competitive basis with existing petroleum-based fuel products without government incentives. In particular, we may be unsuccessful in incorporating lower grade woody biomass, such as logging ~~residues~~slash, branches and bark, in our process to reduce our feedstock costs or maintain our yields. In addition, our research and development efforts may fail to increase the yield of our BFCC process such that we may be unable to produce cellulosic gasoline and diesel at the costs or in the quantities that we anticipate. Our failure to achieve these efficiencies or improvements over time could limit our ability to sell our products at competitive prices and materially and adversely affect our business and prospects.

The production of our cellulosic gasoline and diesel will require significant amounts of feedstock, and we may be unable to acquire sufficient amounts of feedstock to produce the amount of our products that we commit to sell to potential customers, or we may experience difficulties or incur costs obtaining such feedstock.

The successful commercialization of our cellulosic gasoline and diesel will require us to acquire and process large amounts of feedstock~~, which primarily will be Southern Yellow Pine~~. We may experience difficulties in obtaining access to feedstock and transporting feedstock to our commercial production facilities. Our access to feedstock may be adversely affected by weather or actions by landowners, sellers or competing buyers of feedstock. In addition, fires or other natural disasters in the vicinity of our commercial production facilities could affect the availability of feedstock. We may be unable to secure access to feedstock or to secure the transportation of feedstock to our planned commercial production facilities on terms acceptable to us or at all. If we are unable to secure cost-effective access to feedstock, our ability to produce our cellulosic gasoline and diesel would be adversely affected.

The price of woody biomass and other renewable feedstock could increase or become volatile, or their availability could be reduced, which would increase the production costs of our cellulosic gasoline and diesel.

The price of woody biomass and other renewable feedstock may increase or become volatile due to changes in demand, such as the increased use of such feedstock in the generation of renewable electricity. Such changes would result in higher feedstock prices and/or a significant decrease in the volume of woody biomass and other renewable feedstock available for the production of the cellulosic gasoline and diesel we plan to sell, which could adversely affect our business and results of operations.

We may be unable to locate facilities near low-cost, abundant and sustainable sources of biomass and adequate infrastructure, which may affect our ability to produce cost-effective cellulosic gasoline and diesel.

Our business model and the successful commercialization of our cellulosic gasoline and diesel will depend on our ability to locate commercial production facilities near low-cost, abundant and sustainable sources of renewable biomass and in proximity to adequate infrastructure. Our ability to place facilities in locations where we can economically produce our cellulosic gasoline and diesel from nearby feedstock and transport those fuels to potential customers will be subject to the availability and cost of land, the availability of adequate infrastructure and skilled labor resources in such areas, and to legal and regulatory risks related to land use, permitting and environmental regulations. If we are unable to locate facilities at sites that allow economical production and transport of our products, our ability to produce cellulosic gasoline and diesel cost-effectively could be adversely affected.

A disruption in our supply chain for finished catalyst and the components of our proprietary catalyst system could materially disrupt or impair our ability to produce cellulosic gasoline and diesel.

We rely on third parties to supply both finished catalyst and the components of our proprietary catalyst system~~ and, although we currently prepare finished catalyst ourselves, we may require third parties to provide commercial supply of finished catalyst~~. Our operations could be materially disrupted if we lose any of these suppliers or if any supplier experiences a significant interruption in its manufacturing and is unable provide an adequate supply of these ~~components~~products to meet our demand. Any such disruptions or delays could have a material adverse effect on our business and results of operations.

Our business will be subject to fluctuations in commodity prices.

We believe that some of the present and projected demand for renewable fuels results from relatively recent increases in the cost of petroleum. We intend to market our cellulosic gasoline and diesel as alternatives to corresponding petroleum-based fuels. If the price of petroleum-based fuels declines, we may be unable to produce cellulosic gasoline and diesel that are cost-effective alternatives to their petroleum-based counterparts. Declining oil prices, or the perception of a future decline in oil prices, would adversely affect the prices we can obtain from our potential customers or prevent us from entering into agreements with potential customers for our products.

Petroleum prices have been extremely volatile. Lower petroleum prices over extended periods of time may change the perceptions in government and the private sector that cheaper, more readily available energy alternatives should be developed and produced. If petroleum prices were to decline from present levels and

remain at lower levels for extended periods of time, the demand for cellulosic and other renewable fuels could be reduced, and our results of operations and financial condition may be adversely affected.

In addition, our commercial production facilities may use significant amounts of natural gas to operate. Accordingly, our business depends on natural gas supplied by third parties. An increase in the price of natural gas could adversely affect our results of operations and financial condition.

Growth may place significant demands on our management and our infrastructure.

We have experienced, and may continue to experience, expansion of our business as we continue to make efforts to develop and bring our products to market. Our growth and operations have placed, and may continue to place, significant demands on our management and our operational and financial infrastructure. Managing our growth will require significant expenditures and allocation of valuable management resources. If we fail to achieve the necessary level of efficiency in our organization as it grows, our business, results of operations and financial condition would be harmed.

We may incur significant costs complying with environmental laws and regulations, and failure to comply with these laws and regulations could expose us to significant liabilities.

The production of renewable fuels involves the emission of various airborne pollutants. As a result, we are subject to several different environmental laws, regulations and permitting requirements administered by the EPA and the states where our facilities are and may be located, including CAA requirements. These laws, regulations and permitting requirements may restrict our emissions, affect our ability to make changes to our operations, and otherwise impose limitations on or require controls on our operations. In addition to costs that we expect to incur to achieve and maintain compliance with these laws, new or more stringent CAA standards or other environmental requirements in the future also may limit our operating flexibility or require the installation of new controls at our facilities.

We also use, transport and produce hazardous chemicals and materials in our business and are subject to a variety of federal, state and local laws and regulations governing the use, generation, manufacture, storage, handling and disposal of these materials. Our safety procedures for handling, transporting and disposing of these materials and waste products may be incapable of eliminating the risk of accidental injury or contamination from the use, storage, transporting, handling or disposal of hazardous materials. In the event of contamination or injury, we could be held liable for any resulting damages, and any liability could exceed our insurance coverage. We may not be insured against all environmental accidents that might occur, some of which may result in toxic tort claims. There can be no assurance that violations of environmental, health and safety laws will not occur in the future as a result of human error, accident, equipment failure or other causes. Compliance with applicable environmental laws and regulations may be expensive, and the failure to comply with past, present or future laws could result in the imposition of fines, third party property damage, product liability and personal injury claims, investigation and remediation costs, the suspension of production or a cessation of operations, and our liability may exceed our total assets. Liability under environmental laws can be joint and several and without regard to comparative fault. Under certain environmental laws, strict liability may attach regardless of whether we were responsible for the release of or contamination. Environmental laws could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations, which could impair our research, development or production efforts and harm our business. Later-enacted federal and state governmental requirements may substantially increase our costs or delay or prevent the construction and operation of our facilities, which could have a material adverse effect on our business, financial condition and result of operations. Consequently, considerable resources may be required to comply with future environmental regulations.

In addition, we are subject to the laws and regulations related to RFS2, including regulations related to generation and transfer of RINs. These regulations are evolving as EPA responds to industry concerns regarding validation of RINs in the wake of recent RIN fraud cases brought against biodiesel producers who allegedly sold biomass-based diesel RINs without having produced the corresponding renewable fuel. Changes in this law could result in additional compliance burdens. Furthermore, any violation of these regulations, including inadvertent violations, could result in penalties.

Cautionary Language in FY 2012 Form 10-K Relative to that of FY 2011 Form 10-K

Climate change legislation, regulatory initiatives and litigation could result in increased operating costs.

In recent years, the U.S. Congress has been considering legislation to restrict or regulate emissions of greenhouse gases, or GHGs, such as carbon dioxide and methane, that are understood to contribute to global warming. In addition, almost half of the states, either individually or through multi-state regional initiatives, have begun to address GHG emissions. Independent of Congress, the EPA has adopted regulations controlling GHG emissions under its existing CAA authority. For example, on December 15, 2009, the EPA officially published its findings that emissions of carbon dioxide, methane and other GHGs present an endangerment to human health and the environment because emissions of such gases are, according to the EPA, contributing to warming of the earth's atmosphere and other climatic changes. In 2009, the EPA adopted rules regarding regulation of GHG emissions from motor vehicles. Pursuant to these and other rulemakings and interpretations, the EPA concluded that GHG-emitting stationary sources would become subject to federal permitting requirements under the CAA starting in 2011. In 2010, the EPA issued a final rule, known as the "Tailoring Rule," that defined regulatory emissions thresholds at which certain new and modified stationary sources would become subject to permitting requirements for CHG emissions under the CAA. In addition, in October 2009, the EPA promulgated a final rule requiring the reporting of greenhouse gas emissions from specified large greenhouse gas emission sources in the United States beginning in 2011 for emissions occurring in 2010. ~~In June 2010, the~~The EPA has also ~~issued a final rule, known as the "Tailoring Rule," that makes certain large stationary sources and modification projects subject to permitting requirements for greenhouse gas emissions under the CAA.~~proposed to regulate GHG emissions from certain electric generating units under the CAA's New Source Performance Standards (NSPS) program, and may regulate GHG emissions from additional source categories under the NSPS program in the future.

At this time, the projected GHG emissions from our ~~facilities, including our~~ initial-scale commercial production facility ~~under construction~~ in Columbus, Mississippi, would fall below the currently applicable thresholds which would require federal GHG permitting or reporting ~~requirements~~. However, our standard commercial production facilities are expected to exceed such thresholds and, therefore, will be subject to GHG permitting and reporting. Although it is not possible at this time to accurately estimate how potential future laws or regulations addressing GHG emissions would impact our business, any future federal laws or implementing regulations that may be adopted to address GHG emissions could require us to incur increased operating costs. The potential increase in the costs of our operations resulting from any legislation or regulation to restrict emissions of GHGs could include new or increased costs to operate and maintain our facilities, install new emission controls on our facilities, acquire allowances to authorize our GHG emissions, pay any taxes related to our GHG emissions and administer and manage a GHG emissions program. We cannot predict with any certainty at this time how these possibilities may affect our operations.

Loss of key personnel, including key management personnel and key technical personnel, or failure to attract and retain additional personnel could delay our product development programs and harm our research and development efforts and our ability to meet our business objectives.

Our business requires a management team and employee workforce that is knowledgeable in the technological and commercial areas in which we operate. The loss of any key member of our management or key technical and operational employees, or the failure to attract or retain such employees could prevent us from developing and commercializing our products and executing our business strategy. We may be unable to attract or retain qualified employees in the future due to the intense competition for qualified personnel among catalyst, refining, alternative and renewable fuel businesses, or due to the unavailability of personnel with the qualifications or experience necessary for our business. In particular, our process development program depends on our ability to attract and retain highly skilled technical and operational personnel with particular experience and backgrounds. Competition for such personnel from numerous companies and academic and other research institutions may limit our ability to hire individuals with the necessary experience and skills on acceptable terms. In addition, we expect that the execution of our strategy of constructing multiple commercial production facilities to bring our products to market will require the expertise of individuals experienced and skilled in managing complex, first-of-kind capital development projects.

All of our employees are at-will employees, which means that either the employee or we may terminate their employment at any time. If we are unable to attract and retain the necessary personnel to accomplish our business objectives, we may experience staffing constraints that will adversely affect our ability to commercialize our products, meet the demands of our potential customers in a timely fashion or to support our internal research and development programs, which could impair our ability to meet our business objectives and adversely affect our results of operations and financial condition.

Weather, natural disasters and accidents may significantly affect our results of operations and financial condition.

Our corporate headquarters, pilot plant and demonstration unit are located outside of Houston, Texas, which is an area exposed to and affected by hurricanes. Major hurricanes may cause significant disruption in our operations on the U.S. Gulf Coast, logistics across the region and the supply of feedstock, which could have an adverse impact on our operations. We do not have a detailed disaster recovery plan. In addition, we may not carry sufficient business insurance to compensate us for losses that may occur. We are not insured against environmental pollution resulting from environmental accidents that occur on a sudden and accidental basis, some of which may result in toxic tort claims. Any losses or damages could have a material adverse effect on our cash flows and success as an overall business.

We may be subject to product liability claims and other claims of our potential customers.

The design, development, production and sale of our cellulosic gasoline and diesel involve an inherent risk of product liability claims and the associated adverse publicity. We may be named in product liability suits relating to our cellulosic gasoline and diesel or the finished gasoline and diesel fuel containing our products, even for defects resulting from errors of our potential customers. These claims could be brought by various parties, including potential customers who are purchasing our products directly from us or other users who purchase our products from our customers.

In addition, our potential customers may bring suits against us alleging damages for the failure of our products to meet specifications or other requirements. Any such suits, even if unsuccessful, could be costly and disrupt the attention of our management and damage our negotiations with other potential customers.

Although we seek to limit our product liability in contracts with our potential customers, including indemnification from customers for such product liability claims, such limits may not be enforceable or may be subject to exceptions. Our insurance coverage may be inadequate to cover all potential liability claims. Insurance coverage is expensive and may be difficult to obtain. Also, insurance coverage may not be available in the future on acceptable terms and may not be sufficient to cover potential claims. We cannot assure you that our potential customers will have adequate insurance coverage to cover against potential claims. If we experience a large insured loss, it might exceed our coverage limits, or our insurance carrier may decline to further cover us or may raise our insurance rates to unacceptable levels, any of which could impair our financial position.

Our operating results may fluctuate in the future. As a result, we may fail to meet or exceed the expectations of research analysts or investors, which could cause our stock price to decline.

Our financial condition and operating results may vary significantly from period to period due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these fluctuations include the following factors, as well as other factors described elsewhere in this Annual Report:

- timing of milestones, operations and results regarding our initial-scale and planned commercial production facilities;
- our ability to achieve or maintain profitability;
- the feasibility of producing our cellulosic gasoline and diesel on a commercial scale;
- our ability to manage our growth;
- fluctuations in the price of and demand for petroleum-based products;

- the availability of cost-effective renewable feedstock sources;
- the existence of government programs and incentives or regulation;
- potential issues related to our ability to report accurately our financial results in a timely manner;
- our dependence on, and the need to attract and retain, key management and other personnel;
- our ability to obtain, protect and enforce our intellectual property rights;
- potential advantages that our competitors and potential competitors may have in securing funding or developing projects;
- our ability to obtain additional capital that may be necessary to expand our business;
- business interruptions such as hurricanes, natural disasters and accidents;
- our ability to comply with laws and regulations;
- our ability to properly handle and dispose of hazardous materials used in our business; and
- our ability to use our net operating loss carryforwards to offset future taxable income.

Due to the various factors mentioned above, and other factors described in this Annual Report, the results of any prior quarterly or annual periods should not be relied upon as indications of our future operating performance.

Our ability to use our net operating loss carryforwards to offset future taxable income may be subject to certain limitations.

In general, under Section 382 of the U.S. Internal Revenue Code of 1986, as amended, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its pre-change net operating loss carryforwards, or NOLs, to offset future taxable income. We have not performed a detailed analysis to determine whether an ownership change under Section 382 of the Internal Revenue Code has occurred after each of our previous issuances of common stock, preferred stock and convertible debt. If we have undergone an ownership change as a result of such issuances or as a result of our initial public offering, our ability to utilize NOLs could be limited by Section 382 of the Internal Revenue Code. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change under Section 382 of the Internal Revenue Code. Furthermore, our ability to utilize NOLs of companies that we may acquire in the future may be subject to limitations.

If we fail to maintain an effective system of internal controls, we might be unable to report our financial results accurately or prevent fraud; in that case, our stockholders could lose confidence in our financial reporting, which would harm our business and could negatively impact the price of our stock.

Effective internal controls are necessary for us to provide reliable financial reports and prevent fraud. In addition, Section 404 of the Sarbanes-Oxley Act of 2002, or Sarbanes-Oxley Act, ~~will require~~requires us and our independent registered public accounting firm to evaluate and report on our internal control over financial reporting~~ beginning with our Annual Report for the year ending December 31, 2012~~. The process of implementing our internal controls and complying with Section 404 ~~will be~~is expensive and time consuming, and will require significant attention of management. We cannot be certain that these measures will ensure that we implement and maintain adequate controls over our financial processes and reporting in the future. Even if we conclude, and our independent registered public accounting firm concurs, that our internal control over financial reporting provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, because of its inherent limitations, internal control over financial reporting may not prevent or detect fraud or misstatements. Failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our results of operations or cause us to fail to meet our reporting obligations. If we or our independent registered public accounting firm discover a material weakness, the disclosure of that fact, even if quickly remedied, could reduce

the market's confidence in our financial statements and harm our stock price. In addition, a delay in compliance with Section 404 could subject us

to a variety of administrative sanctions, including Securities and Exchange Commission, or SEC, action, ineligibility for short form ~~resale~~ registration statements, the suspension or delisting of our Class A common stock from The Nasdaq Global Select Market and the inability of registered broker-dealers to make a market in our Class A common stock, which would further reduce our stock price and could harm our business.

Integrating a new enterprise resource planning system could interfere with our business or operations and could adversely impact our financial position, results of operations and cash flows.

We are in the process of integrating a new enterprise resource planning, or ERP, system. This project requires significant investment of capital and human resources, the re-engineering of many processes of our business, and the attention of many employees who would otherwise be focused on other aspects of our business. Any disruptions, delays or deficiencies in the design and integration of the new ERP system could result in potentially much higher costs than we had anticipated and could adversely affect our ability to develop and commercialize products, provide services, fulfill contractual obligations, file reports with the SEC in a timely manner and/or otherwise operate our business, or otherwise impact our controls environment. Any of these consequences could have an adverse effect on our results of operations and financial condition.

International expansion is one of our growth strategies, and international operations will expose us to additional risks that we do not face in the United States, which could have an adverse effect on our operating results.

We expect to focus our initial business and operations in the United States; however, international expansion is one of our growth strategies. If and when we expand internationally, our operations will be subject to a variety of risks that we do not face in the United States including:

- building and managing experienced foreign workforces and overseeing and ensuring the performance of foreign subcontractors;
- increased travel, infrastructure and legal and compliance costs associated with multiple international locations;
- additional withholding taxes or other taxes on our foreign income, and tariffs or other restrictions on foreign trade or investment;

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- imposition of, or unexpected adverse changes in, foreign laws or regulatory requirements, many of which differ from those in the United States;
- increased exposure to foreign currency exchange rate risk;
- longer payment cycles for sales in some foreign countries and potential difficulties in enforcing contracts and collecting accounts receivable;
- difficulties in repatriating overseas earnings;
- general economic conditions in the countries in which we operate; and
- political unrest, war, incidents of terrorism or responses to such events.

Our overall success in international markets will depend, in part, on our ability to succeed in differing legal, regulatory, economic, social and political conditions. We may not be successful in developing and implementing policies and strategies that will be effective in managing these risks in each country where we do business. Our failure to manage these risks successfully could harm our international operations, reduce our international sales and increase our costs, thus adversely affecting our business, financial condition and operating results.